

REMARKS

The applicant has carefully studied the outstanding Official Action, dated February 22, 2010. The present response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. The present response is furthermore submitted with a Request for Extension of Time under the provisions of 37 C.F.R. 1.136(a). Applicant(s) submit this reply with a ONE-Month Extension of Time, which extends a date for filing a response to the Office Action to June 22, 2010.

In the present action, claims 1-9, 11-21, and 23-35 are pending. Claims 1, 2, 13, 14, 25, 26, 30 and 31 are amended. Claims 10 and 22 are withdrawn from further consideration. Claims 12, 24 and 32 are being cancelled without prejudice. New claims 36 and 37 are added. The new claims are supported by page 4, paragraph [0067] last four lines of the published US patent application.

IN THE CLAIMS

Claim 1 is rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,090,904 to Bailey.

Claims 2-9, 11-21 and 23-35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bailey, in view of U.S. Patent No. 5,022,414 to Muller or U.S. Patent No. 5,012,797 to Liang et al.

Claims 3, 10, and 22 have been withdrawn based on our previous correspondence dated October 14, 2009 in response to a requirement for an election under 35 § USC 121 between patentably distinct species. Please note that there was a slight inaccuracy in the Office Action as the withdrawal of claim 3 indicated in our previous correspondence was not reflected in the current Office Action.

While applicant believes that the original claims clearly indicate that the gas and liquid flows are separate and that they must mix outside the device, applicant has amended independent claim 1 to more clearly indicate that both the gas flow and liquid flow are separately discharged into the ambient with the liquid flow being discharged at a distance from the distal end of the device and that mixing occurs only outside of the claimed device. The gas flow is discharged at the distal end of the device. Mixing of the flows within the device as taught in the Bailey reference (Bailey, col. 4, lines 47-49) and easily recognized

as such from Bailey's figures (Bailey's Figs. 5 and 6), does not occur in applicant's device. Such mixing would be inadequate to reach the velocities contemplated by the invention.

In view of the fact that at least one element or limitation of amended independent claim 1 is absent in the device of Bailey, applicant respectfully maintains that the 35 USC 102(b) rejection has been traversed. Claim 1 is allowable.

Independent claim 14 has been amended *mutatis mutandis* as in claim 1.

Independent claim 26 has been amended in the same vein to better indicate that the gas and liquid are discharged separately and that the configuration of the two discharges is such as to allow fragmentation of the liquid into a mist and acceleration of the resulting mist.

All amendments are readily supported by the Figures, for example, Fig. 7, and text thereof, for example US Pub. Appl., paragraph [0073], lines 7-9, and US Pub. Appl. paragraph [0078], lines 5-7. No new matter is being added.

Applicant also believes that the three references Bailey, Liang et al, and Muller cited in the Office Action when taken singly or in any combination would neither teach nor suggest that which is recited in amended independent claims 1, 14 and 26. Specifically, the configuration of applicant's device is such that at least one of the following features is absent in any combination of the three cited references: A. the construction must be such that the discharge of a gas flow and the discharge of a liquid flow are separate; B. the construction must be such that the liquid flow is discharged into the gas flow so that the liquid flow can be atomized and the resulting mist particles accelerated by the gas flow; and C. the construction must be such that the liquid flow, but not the gas flow, is discharged at a point distant from the distal end of the device with the gas flow being discharged at the distal end of the device. As a consequence the mist particles are formed outside of the device.

Certain of the claims were also amended to obviate antecedent basis issues.

Therefore, in view of everything discussed above, Bailey, Liang et al, and Muller, taken individually or in combination, neither teaches nor suggests all the elements and/or limitations in currently amended independent claims 1, 14 and 26. Accordingly, the USC §102(b) and USC §103(a) rejections presented in the above referenced Office Action are traversed.

All non-cancelled dependent claims 2-13, 15-25, and 27-37 depend, directly or indirectly, from amended independent claims 1, 14 and 26. Since amended independent claims 1, 14, and 26 are allowable as discussed above, dependent claims 2-13, 15-25, and 27-35 must also be allowable.

Applicant respectfully submits that no new subject matter has been added through the amendments made herein to the pending claims, or by the new claims added herein. All of the amended subject matter is supported by the specification and drawings as filed.

CONCLUSION

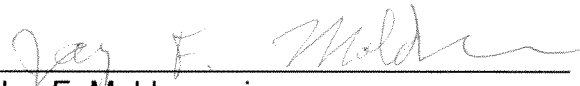
In view of the foregoing amendments and remarks, the application is believed to be in condition for allowance. Favourable reconsideration and allowance of the application are respectfully requested.

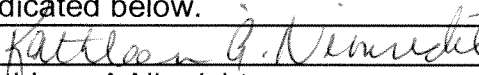
Respectfully submitted,

FAY SHARPE LLP

June 22, 2010

Date


Jay F. Moldovanyi
Reg. No. 29,678
1228 Euclid Ave 5th Flr
Cleveland, Ohio 44115
(216) 363-9000

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I hereby certify that this correspondence (and any item referred to herein as being attached or enclosed) is (are) being transmitted to the USPTO by electronic transmission via EFS-Web on the date indicated below.	
	Signature: 
Date: June 22, 2010	Name: Kathleen A. Nimrichter

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